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MURUGESA MUDALIAR *v.* DAVVA VENKATA KESAVULU CHETTY, (1929) 56 M.L.J. 649.

This case relates to a question of frequent occurrence and hence of considerable importance to mofussil practitioners. Shortly stated, the question is whether the High (or District) Court has power under the provisions of section 24 of the Code of Civil Procedure:

(*i*) to transfer a Small Cause suit to a Court which is not a "Small Cause Court" or a "Court invested with Small Cause powers," and

(*ii*) to transfer a Small Cause suit of greater value to a Court having a limited Small Cause jurisdiction.

The learned Judge (Anantakrishna Aiyar, J.) answered the above questions in the negative after a full discussion of the case-law bearing on the subject. The decision was chiefly influenced by the fact:

(*i*) that section 24, Civil Procedure Code, authorises a transfer only to a Court of "competent" jurisdiction, "competency" in this connection meaning "with reference to the nature and value of the subject-matter of the suit," and that a Court may not be competent either because of the valuation of the suit or because it had no Small Cause powers;

(*ii*) that an order of transfer passed under section 24 (4) cannot invest a Court with Small Cause jurisdiction

nor could such an order enable a Judge having Small Cause powers to a particular amount to try a suit exceeding that amount; that it is only the Local Government under section 15 of the Provincial Small Causes Courts Act and the High Court under section 28 of the Madras Civil Courts Act that can create a Small Cause Court or invest a Court with Small Cause jurisdiction; and that this power cannot be allowed to the District Court or a single Judge of the High Court; and

(*iii*) that in C.M.P. No. 151 of 1917 their Lordships Oldfield and Bakewell, JJ., actually decided that a Small Cause suit of the value of Rs. 1,627-4-6 could not be transferred to a District Munsif's Court as the case "could not ordinarily be disposed of by the District Munsif sitting as a Small Cause Court" and in no other case was the exact point raised and decided.

The decision seriously restricts and cuts down the scope of the useful provisions in section 24 of the Civil Procedure Code. A Small Cause suit could be transferred only to another Small Cause Court or Court invested with Small Cause powers and even then, only if that Court possessed the requisite pecuniary jurisdiction up to the amount in suit. But the necessity for transferring Small Cause suits to ordinary Courts in order to secure greater convenience in trial of suits, or to avoid conflict of decision and consequent embarrassment to parties frequently arises in the mofussil and is of considerable importance. It is therefore necessary to settle this question of practice so as, if possible, to give widest scope to the beneficent rule in section 24 of the Civil Procedure Code.

But is this restricted construction necessarily involved in the provisions contained in section 24 of the Civil Procedure Code? It is submitted, it is not so.

(*a*) It is true section 24 allows transfer only to a Court "competent to try and dispose of" the suit so transferred. The expression "competent, etc." in this connection receives sufficient significance if we take it to mean a Court exercising original civil jurisdiction up to the pecuniary limit of the transferred suit There is nothing in the "nature" of a Small Cause suit as such, which distinguishes it and takes it out of the category of civil suits so as to disentitle a District Munsif who

tries regular suits of far greater value and complexity, to render him incompetent to try and dispose it of. This is amply borne out by section 102 of the Civil Procedure Code which speaks of regular suits of "a nature cognizable by a Court of Small Causes." There is no difference between the nature of a Small Cause suit and any other suit for money. Only certain classes of civil suits called, probably on account of their simple nature, Small Cause suits, are allowed to be tried under a summary procedure with no right of appeal, in order to achieve speedy justice, and power is reserved to the Local Government and the High Court to establish Courts of Small Causes and invest experienced officers, with Small Cause powers, as a sort of guarantee against misuse of summary procedure by inexperienced and junior officers.

(*b*) Section 35 of the Provincial Small Causes Courts Act gives yet another indication that Small Cause suits are essentially suits of civil nature and suits of Small Cause nature can be tried and disposed of by Courts of Ordinary Civil Jurisdiction. It provides that where a Court of Small Causes (or a Court invested with the jurisdiction of a Small Cause Court) ceases *to have jurisdiction with respect to any case,* further proceedings in relation to the case whether before or after decree may be had in an ordinary Civil Court having jurisdiction. It may be noted that the section does not speak of the case where

(*i*) the Small Causes Court ceases to exist (as does section 37 (*b*), Civil Procedure Code), or

(*ii*) where the business of the Court is transferred to another Court (as in section 150, Civil Procedure Code) but it deals with the case where the Court ceases to have jurisdiction *with respect to any case.* It is perhaps difficult to conceive of such a case except where a particular suit is transferred or withdrawn.

(*c*) On the other hand this interpretation of the word "competent" is strongly supported by clause (4) of section 24, Civil Procedure Code itself, which says "The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall for the purposes of such suit *be deemed to be a Court of Small Causes.*" Where is the necessity to "deem" it to be a Court of Small Causes for the purpose of the transferred suit, if it must already be a Court of Small Causes. Such necessity arises only because suits from Small Cause Courts can

be transferred to Courts which are not (but for this clause) Small Cause Courts and are not invested with Small Cause powers. If a Small Cause suit cannot be transferred to any but a Small Cause Court, this clause would be superfluous and meaningless.

(d) Again, where the District Court withdraws a suit from a Small Cause Court, as it doubtless can, and tries and disposes of the same, can it be said that the District Court not being a Small Cause Court or invested with Small Cause powers has no jurisdiction to try the suit?

(e) If the Legislature intended that a suit from a Small Cause Court should under no circumstances be transferred to an ordinary Court nothing could have been easier than to add a proviso to section 24, suitably worded to that effect. But instead of that we find clause (4) which provides for deeming the transferee Court to be a Small Cause Court in respect of the suit transferred.

The learned Judge says: "It is only the Local Government that has the jurisdiction under section 15, Provincial Small Causes Courts Act, to invest particular Courts of Small Causes with jurisdiction up to Rs. 1,000 and under section 28, Madras Civil Courts Act, it is only the High Court (and not one Judge thereof) that has got jurisdiction by notification in the Official Gazette to invest District Munsifs with Small Cause jurisdiction and that only up to the amount of Rs. 300. It therefore seems rather curious that District Court or a Division Bench of the High Court should have power to direct District Munsifs to try suits of the value of Rs. 1,000 and Rs. 2,000 respectively as Small Cause suits." This argument overlooks that it is not the order of transfer of the District Judge but clause (4) of section 24 that invests the transferee Court with Small Cause powers for the purposes of the suit transferred. It is submitted, with great respect, that even the Local Government and the High Court derive the powers under particular sections of the Acts of Legislature and there should be nothing strange if the Legislature thought fit to give the District Court a much more limited power, to transfer a particular case to an ordinary Court, and in order to secure a special convenience, provides Small Cause powers in respect of a transferred case to the transferee Court which is otherwise competent. The power of the Local Government and of the High Court is general and wide in the sense that it covers *all suits* of civil nature below a particular value, while only subject to the conditions laid down in S. 24,

Civil Procedure Code, the District Judge is empowered to transfer a particular Small Cause suit to a District Munsif who for the purpose of that suit is *deemed* to be a Small Cause Court. The District Judge or a Bench of the High Court have no general power to "direct District Munsifs to try suits of the value of Rs. 1,000 and Rs. 2,000 respectively as Small Cause suits." Their power under section 24, Civil Procedure Code, is much more restricted and is a special power. In fact section 24 (4) creates a third class of Small Cause Courts. A Court of Small Causes is either (*i*) constituted as such, or (*ii*) is a Court on which Small Cause Court jurisdiction has been conferred, or (*iii*) is a Court which for a particular case is deemed to be such by a fiction sanctioned by section 24 (4) of the Civil Procedure Code.

Then as regards decisions of Courts on the question of interpretation of section 24, Civil Procedure Code, although there is no reported case which deals exactly with the meaning of the word "competent" in section 24, Civil Procedure Code, substantially the same question was raised in several reported cases and answered against the view propounded by the decision under notice. Under clause (4) of section 24, Civil Procedure Code, the Court trying a suit transferred from a Court of Small Causes shall for the purpose of the suit be deemed to be a Court of Small Causes. It is argued that where a suit is transferred, not from a Court of Small Causes, but from a Court invested with Small Cause jurisdiction, this clause has no application. The considerations urged in support of this argument are:

(*i*) that the Provincial Small Causes Courts Act draws a distinction between:
  (*a*) Court of Small Causes, and
  (*b*) Courts invested with Small Cause jurisdiction and that as section 24 (4) speaks of the former, it cannot be made to imply the latter also;

(*ii*) that the Legislature cannot be held to have intended that a mere order of a District Judge should have the effect of investing the presiding officer of a particular Court with certain powers where such powers can only be conferred ordinarily by an order of the Local Government. This argument found favour with the Bombay High Court in *Bhagvan Dayalji* v. *Bahu*[1] and *Ramchandra* v. *Ganesh*[2] and with the

1. (1883) I.L.R. 8 B. 230. 2 (1898) I.L.R. 23 B 382.

Calcutta High Court in *Dulal Chandra Deb* v. *Rani Narain Deb.*[3] But this view was upset in later decisions of these Courts. (Vide *Narayan* v. *Bhagu,*[4] *Akshay Kumar Shaha* v. *Hira Ram Dosad,*[5] *Madhusudan Gope* v. *Behari Lal Gope*[6] and *Badal Chandra Prohel* v. *Srikrishna Dey Nag*[7]). The Allahabad High Court took a different view from the very beginning (vide *Kauleshar Rai* v. *Dost Muhammad Khan,*[8] *Chhotey Lal* v. *Lakhmi Chand,*[9] *Sukha* v. *Raghunath Das*[10] and *Chaturi Singh* v. *Mt. Rania*[11]). The Madras High Court followed the Allahabad view in *Sankararama Aiyar* v. *Padmanabha Aiyar*[12] and the Patna High Court also holds the same view (*Bhagawan Das* v. *Keshwar Lal*[13]). All the High Courts are agreed on this view.

Now, all these cases show that the practice of transferring cases under section 24 from Small Cause Courts or Courts invested with Small Cause powers to ordinary Courts (not possessing such powers except as a result of the transfer order) is widely prevalent in all the provinces. They show further that all the High Courts have proceeded on the footing that a suit from the file of a Small Cause Court could be transferred to an ordinary Court which by virtue of the transfer becomes for the purposes of the suit so transferred a Small Cause Court. Then, they raise the further question whether or not "Small Cause Court" would include "a Court invested with Small Cause powers." These rulings hold that by virtue of the very transfer, under section 24 (4) the transferee Court becomes a Small Cause Court, whereas Anantakrishna Aiyar, J., holds you cannot transfer a Small Cause suit to a non-Small Cause Court. The decision under notice strikes at the very root of all these pronouncements. It may also be noted that the very argument advanced in favour of the narrower construction of the word "competent" (*viz.*, the District Judge being able to do what was reserved only for the Local Government by the Legislature, etc.) was favoured by the learned Judges in *Dulal Chandra Deb*

3 (1904) I.L.R. 31 C. 1057.
4 (1907) I.L.R. 31 B 314
5 (1908) I.L.R. 35 C 677
6 (1918) 27 C.L J. 461
7 A.I.R. 1929 C 354
8 (1883) I.L.R 5 A 274
9. (1916) I.L.R 38 A 425· 34 I.C. 113
10. (1916) I.L.R 39 A 214 37 I C. 809
11. (1918) I.L.R 40 A 525: 46 I.C. 893
12 (1912) I L.R. 38 M 25· 23 M.L.J. 373.
13 A.I.R. 1923 Pat. 49

v. *Rani Narain Deb.*[3] It was pressed by the applicant in *Sukha* v. *Raghunath Das*[10] (*vide* page 215) and dealt with by Piggott, J., at page 219. In *Madhusudan Gope* v. *Behari Lal Gope*[6] the point arose perhaps more directly than in others. A Small Cause suit was transferred by the District Judge to and decided by another Court not having Small Cause powers to the extent of the amount involved in the suit. The plaintiff preferred a revision against the decision to the High Court under section 25 of the Provincial Small Causes Courts Act and it was argued that the Lower Court had no jurisdiction to try and dispose of the suit. The learned Judges rejected the contention observing that section 24 (4) makes the Lower Court a Small Cause Court for the purpose of the case. In *Sankararama Aiyar* v. *Padmanabha Aiyar*[12] a Small Cause suit from the Sub-Court, Tuticorin, was transferred under section 24 (4) to the District Munsif's Court of Srivaikuntam and then to the District Munsif of Tinnevelly. It was observed by Sundara Aiyar, J.: "That the District Munsif's Court of Srivaikuntam and the Additional District Munsif's Court of Tinnevelly were both Courts competent to dispose of the suit cannot be doubted." Again at page 31, "It is suggested during the arguments that the order of transfer should therefore be regarded as wholly void. But this does not appear to be the correct view to be taken. The District Judge had power to transfer the suit; but had no jurisdiction in doing so to order that the suit should be tried on the regular side contrary to the provision in section 24, Civil Procedure Code."

The decisions in *Bagiammal, In re*[14] and *Manicka Chettiar* v. *Kuppuswami Naicker*[15] are perhaps distinguishable, being cases under the Madras City Civil Courts Act. Section 3 of that Act takes away from the jurisdiction of the City Civil Court suits cognizable by the Small Cause Court, and section 5 makes a special provision for transfer of work from one Court to the other where it is necessary. The general provision in section 24, Civil Procedure Code, does not apply. As regards C.M.P. No. 151 of 1917, the learned Judges hold in that case, that the transfer "should not be granted in the circumstances" of the case. They do not say that they have not got

3 (1904) I.L.R 31 C 1057
6 (1918) 27 C.L.J 461
10. (1916) I.L R. 39 A 214: 37 I.C. 809
12. (1912) I.L.R. 38 M. 25 23 M.L.J. 373.
14. (1917) 32 M.L.J. 258
15. (1926) 25 L.W. 115.

the jurisdiction to transfer. After all it must be remembered that transfer is a matter of discretion to be exercised in the circumstances of each case by the District Judge or the High Court, even in cases which do come under section 24, Civil Procedure Code. The case does not contain any discussion of the relevant provisions of law or of the considerations mentioned above. It cannot therefore be taken to be a ruling which should settle this important question of practice.

In conclusion, it is submitted that section 24 (1) (*b*) (*ii*) relating to "competency" of the Court to which the suit is to be transferred should be construed in such a manner as not to render clause (4) meaningless. The two clauses need not necessarily clash with each other and can be harmonised.

M. VENKATA CHAYANULU, B.A., B.L.,
Pleader, Rajahmundry.

SUMMARY OF ENGLISH CASES.

J. GLIKSTEN AND SON *v.* GREEN, (1929) A.C. 381 (H.L.).

Income-tax—Company trading in timber—Insurance against fire—Loss of timber by fire—Timber valued at estimated price deducting depreciation, etc.—The estimate less than the insurance amount received—If the whole amount should be included in Profit and Loss Account.

A large quantity of timber belonging to a company carrying on business as timber merchants was destroyed by fire and in respect of this loss, the company received large sums from various insurance companies. For many years past, the company had been allowed to deduct the premiums paid by it in respect of the insurance policies. In the company's accounts, the stocks were every year valued at cost or market value, whichever was the lower and large sums were also written off as for depreciation. The value as per the account of the timber destroyed stood at 160,824*l.*, whereas the amount received from insurance companies was 477,838*l.* The question was if the whole of the insurance money constituted a trading receipt and should have been brought into profit and loss account for the year in question.

Held, the amount received is a gain of the company in the course of its business no less than the sale price of the timber would have been, if the timber had been sold in the course of ordinary sales during the continuance of the company's busi-

ness and the amount received from insurance must be brought into the profit and loss account for the purposes of income-tax. The result of the fire was that they got rid of so much timber for the insurance figure.

HAGART AND BURN-MURDOCH *v.* COMMISSIONERS OF INLAND REVENUE, (1929) A.C. 386.

Income-tax—Solicitors—Lending money to clients in the hope of large amount of legal business—Loss on such loans—Habit of the firm to make such loans to clients—If a permissible deduction.

A firm of solicitors at Edinburgh advanced large sums of money to certain of their clients who were interested in promoting a company to experiment with a new metal alloy invention. This firm of solicitors was in the habit at times of lending money to their clients. The solicitors became law agents of the company and expected the company to extensively develop, but unfortunately the company failed and the solicitor's advances lost. The Commissioners found that "the sole relations between them (solicitors) and the company were those of solicitor and client, in the course of which they also became creditors for the advances."

Held, the loss of money so advanced cannot be treated as a loss in ascertaining the profits and gains of the profession of solicitors. It was a separate venture from that of solicitors and even if undertaken in the hope that it would help their business, it was none the less no part of their true profession, nor necessary for it.

Lord Shaw of Dunfermline.—"It is in the highest degree doubtful whether any custom could avail to bring banking or money-lending within the scope of a solicitors' business."

Usher's Wiltshire Brewery Co. v. *Bruce,* (1915) A.C. 433 referred.

SHOTTS IRON CO. *v.* CURRAN, (1929) A.C. 409 (H.L.).

Workmen's Compensation Act, 1925, *S.* 8, *Sub-section* 1—*Leaves one or more children—Children, meaning of—If includes infant dependents other than workman's own sons and daughters.*

Held, by a majority (Lord Carson dissenting).—"Children under the age of fifteen" in the context refers to those infant members of the deceased workman's family who

were being supported wholly or in part by the deceased workman's earnings and includes brothers and sisters also.

Pritchard v. *Bettisfield Colliery,* (1925) 2 K.B. 284 and *Campbell* v. *Portland Colliery Co.,* (1926) S.C. 512 followed.

The question if it takes in illegitimate children left open.

FINCH *v.* COMMISSIONER OF STAMP DUTIES, (1929) A.C. 427 (J.C.).

Gift—Death Duties Act, 1921 (*New Zealand*), *Ss.* 38 and 39, *Sub-section* (*f*)—*Voluntary expenditure on alterations to the wife's house—If amounts to a gift of the expended amount.*

A husband and wife were living together in a house belonging to the wife. They enjoyed a separate income and the wife's income was habitually under contribution to the household expenditure. Within three years before his death, the husband expended large amounts in alterations and repairs to the house in which they were living. The husband was then only 53 and the object was found to be the improvement of the family home. By S. 38 of Death Duties Act, 1921 (New Zealand), gift is defined to mean any disposition of property made otherwise than by will..........without fully adequate consideration in money or money's worth and by S. 39, sub-section (*f*) "a disposition of property'' means "any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person.''

Held, that the transaction to be a gift within the meaning of the sub-section, it must have been entered into intending to have the effect stated therein and it is not enough merely to prove that it has that effect. Nor can the mere fact of voluntarily spending money on the property of the donee make it a gift unless he had the intention to make a gift.

CANADIAN PERFORMING RIGHT SOCIETY *v.* FAMOUS PLAYERS CANADIAN CORPORATION, (1929) A.C. 456 (J.C.).

Copyright—Infringement of—Assignee—Non-registration of assignment—If S. 39 bars a suit against competing assignees or any action under the Act—Construction—Statute.

The assignees of the assignees of the performing rights of certain musical works brought the action to restrain the respondents by injunction from infringing their copyright. The

assignment was not registered and the question arose if S. 39, sub-section (1) of Copyright Act, 1921, prohibited the plaintiffs from suing even strangers.

Held, the assignment not having been registered and the action being an action under the Act, the suit was not maintainable and the section is not confined to an action between competing assignees only. It is the only duty of a tribunal of construction "to say what the words mean, not what they should be made to mean in order to avoid inconvenience or hardship". But "if it could be established that the provision in question is capable of two meanings, one of which produces a reasonable and the other an unreasonable and unjust result, much might be said in favour of adopting the former."

GANAPATHY PILLAI *v.* ALAMELOO, (1929) A.C. 462 (J.C.).

Will—Construction—Property to be divided between 4 sons after 21 years from testator's death—Issue of deceased sons to take the father's share—In the event of a son dying without issue, the surviving sons to take equally—If issue can claim with surviving son a share in a deceased son's share.

A testator by his will bequeathed his properties in favour of trustees with directions to divide the trust funds into five shares twenty-one years after his death and pay one of such shares to his wife and to pay one other of such shares to each of his sons Parimanum, Komarasami, Ratnam and Ganapathi, and in the event of any such son dying before the expiration of such period 21 years leaving child or children him surviving they shall take the share to which such son of his would have been entitled to if he had survived the 21 years period and in default of issue of any son the share of such son to be payable to the surviving sons equally between them. Within the 21 years period, Ratnam died without issue, Parimanum and Komarasami leaving one child each and Ganapathi was surviving. The question arose if the share of Ratnam survived to Ganapathi along with or was to be divided between him and the children of the brothers.

Held, that the terms of the original gift to the sons are such as to create a plain vested gift and the subsequent alternative gifts operate by way of divesting in certain events that vested gift and the share of the son who dies before twenty-one years without issue is payable to the surviving son, without any

provision for the substitution of the issue of a son who has died during the period.

GROVE-GRADY, *In re.* PLOWDEN *v.* LAWRENCE, (1929) 1 Ch. 557 (C.A.).

Trust—Charitable trust—Bequest to trustees to found and maintain a society for the preservation of animals not human—No distinction made between domestic and wild animals—If a valid charitable trust.

A testatrix devised and bequeathed by her will the residue of her estate after paying certain debts, etc., for the founding and maintaining of a charitable institution called "Animals Benevolent Society". The members of committee of management were required to be anti-vivisectionists. The purpose of the Society was to provide refuge, etc., for *"all animals, birds or other creatures not human"* generally. The question was if this provision does not offend against rule of perpetuities.

Held, by Romer, J, that a gift the object of which is to prevent cruelty and suffering to the lower animals is charitable because it tends to promote public morality by stimulating the generous sentiments in man towards the lower animals and for that purpose it is irrelevant to consider if the animals sought to be helped are such as are beneficial to the mankind or positively harmful to them.

On appeal, held by a majority (Lord Hanworth, M.R, Russell, L J., and Lawrence, L.J., dissenting).—Upon the authorities a trust in perpetuity for the benefit of animals may be a valid charitable trust if in the execution of the trust there is necessarily involved benefit to the public. But where, as in this case, there is no provision for the admission of the public into the area or for the non-molestation by the other animals in the area, there can be no charitable trust.

In re Wedgwood, (1915) 1 Ch. 113 explained.

Per Russell, L.J.—"It is well settled that if consistently with the trust the funds may be applied for a purpose not charitable, the trust will fail for perpetuity notwithstanding that the funds might under the trust have been applied for purposes strictly charitable."

MACLEAN *v* WORKERS' UNION, (1929) 1 Ch. 602: 141 L.T. 83.

Trade Union—Expulsion from the Union by the Executive Committee of—Executive both prosecutor and Judge—Bias

of two members—Committee acting in good faith—Member heard in support of his case—If court can interfere.

The plaintiff, member of a Trade Union, was expelled from the Union, by the Executive Committee of the Union purporting to act under the rules of the Union. The charges were that (*i*) he issued certain circulars without the approval of the Union and (*ii*) published an election address in a form not authorised by the Union. The plaintiff was given an opportunity to support his case and after hearing him the expulsion was confirmed by the executive. It was contended that (*i*) the proceedings were void as the Executive Committee acted both as prosecutor and judge and (*ii*) some of the members of the committee were biassed against the plaintiff.

Held, that the jurisdiction of the Courts in regard to domestic tribunals was of a limited nature and if those tribunals acted fairly, honestly and in good faith in exercise of its powers, the courts cannot interfere even if hardship is thereby caused to some of its members. It is settled law that if the parties to a contract agree that a person who may well be suspected of a *bias* or who may be deciding his own cause shall be judge in a dispute between the parties, the courts will not interfere.

Leeson v. *General Council of Medical Education and Registration,* (1889) 43 Ch. D. 366 applied.

Dawkins v. *Antrobus,* (1881) 17 Ch. D. 615 followed.

STIMSON *v.* GRAY, (1929) 1 Ch. 629.

Vendor and purchaser—Contract for sale of land—Possession taken in pursuance thereof by purchaser—Sale subject to certain covenants—Mistake between parties regarding them—Material terms missing from the contract—Court if and when can supply—No enforceable contract—If damages can nevertheless be awarded.

By a contract for the sale and purchase of land, it was agreed that the purchaser was to use the land subject to certain restrictions. The copy of the restrictions sent to the purchaser by the vendor's agent was not the correct one and it did not contain a material term, *viz.*, a restraint on using the premises for trade purposes, though the vendor contemplated the restriction. The purchaser had entered into possession of the house as for residence and later wanted to open a shop. On objection by the defendant vendor, this action was brought for specific performance of the contract or for damages.

Held, in a case in which there has been part performance and a long enjoyment of possession, the court is generally unwilling to hold that the contract is incomplete, but if the court is unable to determine all the material terms of the alleged contract, either by interpretation of the language used or by holding that the missing terms are such as the law will supply, it is not possible to hold that there is a binding contract. In such a case not only can no specific performance be decreed, but no damages either can be assessed.

Lord Wrenbury's observations in *Waring & Gillow Ltd.* v. *Thompson,* (1912) 29 T.L.R. 154 followed.

WALTER, *In re,* SLOCOCK *v.* OFFICIAL RECEIVER, (1929) 1 Ch. 647.

Bankruptcy—Death of bankrupt undischarged after adjudication—Will by bankrupt subsequent to adjudication—Personal earnings of bankrupt subsequent to adjudication—Creditors since adjudication entitled to the exclusion of prior creditors—Funeral expenses if to be paid in full.

After adjudication, but before discharge, the bankrupt secured a job and earned some moneys which he had placed in a bank. He died undischarged and left a will appointing plaintiff as executor. The executor spent for his funeral expenses out of pocket. There were also bills outstanding for goods supplied since bankruptcy.

Held, as regards personal earnings, the bankrupt is entitled to retain for himself and spend what was necessary to maintain himself and his family reasonably and if it happens that he dies before having paid those who have supplied the necessary commodities, they are entitled to be paid for before the trustee takes anything—the question being if the debts are or are not necessaries. As regards funeral expenses, that both by analogy to S 130, Bankruptcy Act, 1914, and on general principle, the executor is entitled to be paid the reasonable funeral expenses in full before the trustee in bankruptcy can come in.

PONTARDAWE RURAL DISTRICT COUNCIL *v.* MOORE-GWYN, (1929) 1 Ch. 656.

Nuisance—Neighbouring premises owners—Rocks on the summit of a bluff or steep incline on defendant's land—Fall of rock causing damage to plaintiff's premises—Fall due to weathering—Liability of defendant for damages.

The action was brought for relief in respect of certain rocks on defendant's land which were on a slope and steep incline and in such a situation as to be dangerous to plaintiff's land, if as once happened, they decayed due to weathering causes and fell down. The question arose if the defendant was or was not liable to the plaintiffs, to execute necessary works to maintain the rocks in a condition of safety, though it was a natural formation and not brought on to the premises by the defendant.

Held, that the action was an attempt to impose on an owner, who is using and enjoying his land in the ordinary manner of its use and reasonably, liability for damage sustained by the property of another through natural agencies and such an action cannot be maintained.

Rylands v. *Fletcher,* (1868) L.R. 3 H.L. 330 and *Giles* v. *Walker,* (1890) 24 Q.B.D. 656 referred to.

In re WHITAKER. ROOKE *v.* WHITAKER, (1929) 1 Ch. 662.

Tenant for life and remainderman—Will—Testator declaring his residue to be in trust for his widow for life and his children after 21—Freehold, houses belonging to the estate—Houses kept in tenantable repair, but notice from Local Council to improve the structure—Expense thereof if to be borne by capital or income.

Though the trustees under the will were carrying out the necessary periodical repairs to keep the houses in a tenantable condition at the expense of income, in compliance with a dangerous structure notice served on them by the London County Council, extensive repairs involving the pulling down, rebuilding and reinstatement of the houses were made and the question was if the expenses were to be borne by capital or income.

Held, that where the expenditure was to make good defects due to periodical neglect, it must fall on income [*In re Gray,* (1927) 1 Ch. 242]; but where it involved structural reconstruction of a permanent nature, it must fall on the corpus.

In re Robins, (1928) Ch. 721 distinguished.

In re Hotchkys, (1886) 32 Ch. D. 408 referred.

BAKER *In re.* BAKER *v.* BAKER, (1929) 1 Ch. 668: 141 L.T. 29.

Will—Codicil—Successive wills and codicils, each revoking the earlier—Last codicil referring only to and confirming the first will—If revokes the later wills and codicils impliedly.

A testatrix made a will in 1893 with certain provisions therein. In later years she made other wills which expressly revoked the 1893 will. But in 1921, she made a codicil by which she stated that she gave one of her houses to her daughter and "in all other respects confirm my said will and codicil" referring by the "said will" to the will of 1893.

Held, that the effect of the codicil of 1921, was to displace the later wills and revive the first. "It became both first and last."

Re BINNIS. PUBLIC TRUSTEE *v.* INGLE, (1929) 1 Ch. 677: 141 L.T. 91.

Will—Share of residue—To testator's children attaining a certain age and if any such child should die, his children to take the parent's share—Parent liable to the estate—If the children entitled to share without liability to pay the debt.

A testator, by his will, left a share of the residue to a daughter for life and after her death upon certain trusts to her children and grandchildren and if as happened, the daughter died issueless, the share was to go to his other children in equal shares and if any of his children so entitled to take were dead, then that child's share to go to his or her children, such children "to take only such share as his, her or their parent would have taken if living". One son so died and his children claimed his share. That son owed a certain amount to the testator's estate and it was contended that as that son would be entitled to take the share less the debt, so his children under the clause can only take the share less the debt.

Held, that what was given to his children was the share which in the first instance the parent would have taken and not what he would ultimately have received after the trustees under the will had exercised their right to pay the debt out of the share.

In re Scott, (1903) 1 Ch. 1 explained and distinguished as a case of an advancement to the testator's child and not a case of a debt or liability of the legatee to the testator's estate.

MINTER *v.* PRIEST, (1929) 1 K.B. 655: 141 L.T. 140.

Defamation—Solicitor—Defamatory statements alleged to be made by solicitor about the plaintiff to his client—Client eventually not engaging the solicitor—If statements privileged.

It was alleged that the plaintiff, a property dealer, was slandered by the defendant (solicitor), the slander consisting of statements made to a person who consulted him with regard to the purchase of some property of the plaintiff. The solicitor was not eventually engaged, for the client, and in an action for slander, the question arose if statements made by the solicitor who finally declines to act can be privileged.

Held, after a consideration of the cases, that if what passes is with a view to, and for the purpose of retaining the solicitor, then it is protected even if the solicitor does not accept the retainer, so long as there is no duty cast on the solicitor as a citizen to give evidence of a crime or fraud contemplated by the client.

JOTTINGS AND CUTTINGS.

Sir V. Bhashyam Aiyangar's Statue: Unveiling Ceremony.—On Friday, the 18th October, Sir P. S. Sivaswami Aiyar unveiled the bronze statue of Sir V. Bhashyam Aiyangar which the Government permitted to be located within the High Court compound in front of the Advocates' Association. The large gathering that assembled to participate in that function testified to the respect in which his memory is still held in Madras.

Dewan Bahadur T. R. Ramachandra Aiyar, the President of the Association, opened the proceedings with the following speech:—

"It is a matter of proud privilege and profound pleasure for me to rise to give expression to the cherished sentiments of esteem and affection that I have felt to Sir V. Bhashyam Aiyangar, known to the members of our Bar as "THE PRINCE AMONG LAWYERS". He belonged to the orthodox community of South Indian Vaishnavites. Many indeed were the achievements made by him for the Profession of Law. A student of Law all his life, a jurist of unsurpassed renown, a Judge of great ability, a stalwart member of the local Senate and Syndicate for nearly quarter of a century, a public-spirited politician of moderately progressive views, a silent benefactor, a distinguished countryman, the first Indian Advocate-General in our land, his memory will ever be enshrined in the midst of hallowed associations and his name, we all feel sure, will ever stand

out prominently among the foremost of the shining stars in our legal firmament. This statue, which to-day is unveiled to public gaze by our talented friend Sir P.S. Sivaswami Aiyar, will ever remind us of the great and good part played by him in building the Vakil Raj and helping it to occupy the proud position which it to-day occupies and to wield that amount of vast influence which it to-day wields among the masses and the intelligentia of our hoary Motherland.

On his death in November, 1908, the Government expressed its appreciation of his services in the following terms:—

"NOTIFICATION. *Fort St. George, November* 24, 1908, *No.* 642.—His Excellency the Governor in Council has received with very deep regret the intelligence of the death of Sir Vembakam Bhashyam Aiyangar, *Kt.*, C.I.E., and desires to record his appreciation of his high character as well as of the public services rendered by the deceased in the course of a long, strenuous and distinguished career.

He served almost continuously as a member of the Provincial Legislative Council since his first nomination to it in the year 1888 and in that capacity he was ever ready to place his great abilities as a jurist and his intimate acquaintance with the practical working of the laws at the service of the Council.

So pre-eminent a position had he attained in his profession that he was appointed to officiate as Advocate-General in the Presidency, being the first Indian to occupy that great place; the duties of which he performed with fidelity and indefatigable industry. In 1901 he was elevated to the Bench as a Judge of the High Court of Judicature, an office which he discharged with conspicuous ability and with great satisfaction to the public.

His public services and his high personal character have been recognised by the Government on many occasions. His loss will be greatly felt both by the Government and the people. The memory of his honourable life will long survive him to furnish an inspiring example to his countrymen.'

It was universally felt that his memory should be perpetuated in a suitable form and an appeal was accordingly sent by the Vakils' Association to the public calling for subscriptions. Though the appeal was generously responded to for one reason, and for another, the proposal did not for a long time materialise till at last in 1923 it was decided that a statue should be put up at a cost of Rs. 12,000. Tenders were called for and the work was finally entrusted to Mr. S. Nagappa, the well-known local sculptor and artist. The statue was ready in September, 1927, but some time had necessarily to be spent thereafter in

settling the location of the statue. After settling the place, the sanction of the Government of India had to be obtained and the order of the Government approving of the selection of the site and giving sanction was obtained only recently. We are thankful to the Hon'ble The Chief Justice and the other Judges for their cordial co-operation in this matter. We are glad we have at last redeemed, however inadequately it may be, the long overdue debt to the memory of the great lawyer the extent of the obligation to whom of the public in general and the legal profession of this country in particular can hardly be overestimated."

It was in the fitness of things that Sir P. S. Sivaswami Aiyar should have been requested to unveil the statue and, in doing so, he said:

"I deem it a privilege to be called upon to take part in this function for the purpose of doing honour to the memory of Sir V. Bhashyam Aiyangar who was one of the most distinguished members of the profession to which we belong. I believe this privilege is due to the fact that I happen to be one of the few survivors of the generation of lawyers that knew him well. Since his death, 21 years ago, a new generation of lawyers has come into being and grown up the members of which have not heard or seen him and to whom he is only a name. It is somewhat singular that such a distance of time should have intervened between his death and the erection of this monument in his honour. Into the circumstances which have led to this long delay it is needless to enter. Perhaps it is due to our oriental characteristic of sluggishness and indifference to time. It may perhaps be interpreted as evidence of the enduring fame achieved by Sir V. Bhashyam Aiyangar as the greatest lawyer that this Presidency has produced. It is a sign that his reputation is still uneclipsed and cherished as a rich legacy by the profession. The triumphs of a practising lawyer are of a fleeting character. They survive only in the memories of his contemporaries and in bar room anecdotes. His performances are not creative like those of men of talent in some other walks of life. Too often his merits are not known to the public at large and are soon lost in oblivion. The memorial which will be unveiled this afternoon is the abiding tribute of a grateful profession proud of the eminence attained by Sir V. Bhashyam Aiyangar and of his achievements. He was great not merely as a Lawyer and Jurist, but also as an Advocate, as a Judge and as a Legislator. If a Judge has not the same opportunities for making a fortune as a lawyer, he has an advantage in his

ability to leave an enduring record of his performances which may live after him provided they contain any worthy contribution to the science of law. What were Sir Bhashyam Aiyangar's titles to unique distinction and to abiding remembrance in the minds of the profession? When he joined the ranks of the legal profession as a High Court Vakil, there were three separate branches of the profession—the Barristers, the Attorneys, and the Vakils. Owing to the superior recognition and preference then accorded to the Barristers as representatives of the oldest branch of the law and owing to the fact that the profession of Vakils in this country was comparatively in its infancy, Vakils were generally looked upon as members of an inferior branch and the Vakils were themselves in the habit of acknowledging the Barristers as their superiors and playing a subordinate and secondary part. In all important cases, Vakils were in the habit of engaging and instructing Barristers as senior counsel. Madras was the Province in which the Vakils emerged earliest from this state of dependence and parasitism. Bengal followed us and I do not know whether the Vakils in Bombay have even at the present day achieved their independence of the Barristers and learnt to respect themselves. If the legal profession has been unified within the last few years and if the arbitrary distinctions between the different branches have been abolished, it is due entirely to the success and the distinction achieved by the Vakils in Madras, Bengal, Allahabad and other parts of the country. Of the men who were our leaders in this movement for independence and self-respect Sir V. Bhashyam Aiyangar occupied the foremost place in Madras as Sir Rashbehari Ghose did in Bengal. When Sir Charles Turner arrived in Madras as Chief Justice, he was surprised to find Vakils conducting important suits and appeals without the assistance of any Barristers. When Sir Charles Turner retired in 1885, a few months after my enrolment, the Vakils had made good their position and continued to maintain it ever afterwards. Sir V. Bhashyam Aiyangar had then attained pre-eminence at the Bar. On his arrival in Madras from Allahabad Sir Charles Turner entertained the idea that Mr. Justice Mahmood was the greatest Indian Jurist in India. But long before he left Madras he had come to the conclusion that Sir Bhashyam Aiyangar was a greater Jurist than Mr. Justice Mahmood. In whatever light it may be regarded by the clients who have to pay fees it was Sir Bhashyam Aiyangar who helped to raise the scale of fees paid to Vakils and who raised the status and prestige of the Vakils. To have raised the status

of the Vakils and their position in the estimation of the Judges and the public was no small achievement for which the present generation of Lawyers is indebted to Sir Bhashyam Aiyangar in particular and his contemporaries generally. But this is not his only title to remembrance as a Lawyer and an Advocate. If any man was ever a born Lawyer, Sir Bhashyam Aiyangar was one. He had the legal instinct and the legal mind. He had an unrivalled mastery of the principles of law which he often said were the expression of a highly cultivated common sense applied to the determination of rights and duties in the complicated relations of human beings. His methods of work and his devotion to duty were an example and an inspiration to his juniors If I were called upon to mention his leading characteristics as a Lawyer and as an Advocate, I should mention the thoroughness with which he studied his cases, the care with which he managed the presentation of his cases, his extreme wariness and alertness, his readiness of resource, his clarity of thought and his precision of language. It may not be given to all of us to be subtle or profound as he was, but there is nothing to prevent the cultivation of his other virtues. He had some of the limitations of the majority of lawyers. He was not interested in many other matters besides law. His style lacked the literary grace of Sir Rashbehari Ghose. His intellect was cold and dry, and his legal studies had a desiccating tendency. The dry light is not what appeals to a mixed audience. As a Judge of the High Court, an office which he adorned and which unfortunately he was allowed to hold only for less than three years, it was his ambition to purge the reports of all the rotten decisions. He purposely arranged with the Registrar to post the most intricate cases before him. To him, the law was only the handmaid of justice. He was keen on brushing aside all technical formalities which impeded justice. But he never mistook the function of the Judge for that of the Legislator or sought to advance any pet theories or notions by going against well-understood principles of law or the weight of evidence. His record as a Judge is superior in quality and volume to that of many another Judge in 15 years. His range of reading outside law was very limited, but he had an originality of mind which enabled him to throw fresh light upon any subject upon which he was consulted. As a Legislator he had a remarkable capacity for draftsmanship which should make the law fool-proof. His Gains of Learning Bill which he successfully piloted through the Legislative Council was unfortunately vetoed by the then Governor in deference to the foolish agitation of the ignorant

and it has now been re-introduced after thirty years in the Indian Legislature in the same form. His services as a Legislator were frequently utilised by the Government and eventually rewarded with the Advocate-Generalship which he was the first to discover could be held by a Vakil. Had he been born in England he would have risen to and adorned the Woolsack. Of the great Chancery Judges with whom comparison is naturally suggested, the one whom Sir Bhashyam Aiyangar most resembled was Sir George Jessel, the great Master of the Rolls. To have found the Vakils weak, unorganised and dependent, and left them organised, manly and self-reliant, is that not a claim to our grateful recollection and to the perpetuation of his memory? I am glad it has been permitted to me to pay my homage to the memory of a great and admired leader."

Mr. Alladi Krishnaswami Aiyar in proposing a vote of thanks said:

"Sir P. S. Sivaswami Aiyar, my Lords and Gentlemen,—I have been commissioned by the Secretary of our Association to perform the very pleasant duty of proposing a hearty vote of thanks to Sir P. S. Sivaswami Aiyar and to the distinguished concourse of gentlemen that have responded to our invitation. Possibly the justification for the procedure adopted by the Secretary lies in the fact that for the time being I happen to hold an office which is pre-eminently the acquisition to the profession in Madras of Sir V. Bhashyam Aiyangar's. We are particularly grateful to you, Sir, for consenting to take part in to-night's function and to unveil the statue. You are one of the few representatives of the older generation of giants and brilliant galaxy of legal talent that adorned the profession some 20 or 25 years ago, before whom most of us here are pigmies. I hope I will be pardoned if I give expression to an oft-repeated sentiment of mine that the profession is to-day what the immortals in the profession have made it for us. To most of the lawyers that are assembled here the matchless advocacy of Sir Bhashyam, his deliberative and slow if somewhat halting manner, his close analysis, his penetrating intellect, his wonderful adaptability, his power of divination and insight into the working of the mind of the Judges before whom he practised may perhaps be merely a tradition and an idea. But his passion for the profession as such and his almost spiritual devotion to the pursuit of law as a science have become a part of the heritage of the profession in this Presidency. The Law Reports, which are illumined by his masterly judgments,

which form a special chapter on Indian Jurisprudence, bear eloquent testimony to his scholarly erudition, to his insight and to his legal acumen.

As you have rightly pointed out, there is this distinction between a Judge and a practising lawyer. From the very nature of things, the forensic talents of a lawyer, however much they might have contributed to the shaping of the law, are of an ephemeral nature: but a Judge's reputation, if the Judge is of the right type, survives his time and in some cases is everlasting.

In my younger days at the Bar, if a member of the profession wanted to master the intricacies of an Indian enactment or a particular branch of law, there was no better course open to the young student than to closely study the judgments of Sir Bhashyam in the Full Bench and various other cases in which he took part during that period of intense legal activity of 2½ years in this Court when he was a Judge.

You will forgive me if I make reference to one personal incident. I happened to be a complimentary junior in the last case in which he appeared with Mr. Sundaram Aiyar. The argument which he then addressed to the Court when he traced the development of the conception of property in this country and compared it with the notions of property obtaining in England, is still fresh and vivid in my mind: and it is a source of pride to me that he very kindly took up a reference which I handed to Sir V. Bhashyam about the notion of property in Hindu Law as developed in West and Buhler.

I shall close my remarks with the fervent hope and with the prayer that the career of Sir V. Bhashyam Aiyangar will serve as a beacon light to this generation of lawyers and to the generations yet unborn. It may not be given to all of us to rise to the eminence of Sir Bhashyam and to the stately wisdom of you, Sir, who is taking part in to-night's function: but it is within the power of each one of us, the humblest and the simplest of us to walk in the footsteps of the great and the mighty.

There is one other duty I have to perform and that is to propose a hearty vote of thanks to my Lord the Chief Justice and the other Judges who have very kindly responded to our invitation. The Bar and the Bench are not distinct institutions and it is a very gratifying and healthy sign to note that the Judges of our Court realise that they are part of ourselves."

Mr. Justice Astbury.—Although no official announcement of the fact has yet been made, it is gene-

rally known that Mr. Justice Astbury, who has been a Judge of the Chancery Division since 1913, will not return to the Courts after the Long Vacation. The learned Judge's methods have sometimes been criticised, chiefly on the ground that he was apt to indicate very definitely when he thought a case ought to be settled; but those who knew him best were well aware that he was inspired by a veritable passion for doing justice between the parties before him, and that nothing distressed him more than to have to give, on legal grounds, a judgment which was not, in his view, in accordance with the precise merits of the case. At the Bar, Sir John Astbury had a remarkable reputation for a Chancery leader; he was recognised as being fully the equal of any of his contemporaries in ordinary Chancery work, he was constantly engaged in patent cases, and he was noted for being as able at cross-examination as any light of the Common Law Side. On the Bench, as at the Bar and in Parliament, he was personally immensely popular; and the regret which is felt at his resignation is increased by the knowledge that it is, to some extent at any rate, due to trouble with his eyes. Mr. Justice Astbury carries with him in his retirement the respect and the affection of the profession.—*L.J.*, 1929, p. 69.

The House of Lords.—All plans for the reform of the House of Lords appear to be doomed to failure. Whether they are big or little, the result is the same. Lord Darling's plan, which was discussed and rejected by that House on the 24th ultimo, was so small as hardly to deserve to be called reform. It only proposed to bring into effect the provisions of the "Act for the placing of the Lords in the Parliament" (31 Hen. VIII, c. 10), to which Prof. Pollard called attention recently, and which we stated three weeks ago (*ante* p. 18). Under this Act, Officers of State who are not peers are entitled to seats in the House but have no votes. Lord Darling proposed to make this provision operative by a resolution that any Minister of the Crown who is a member of the other House shall have the right to sit and speak in the Lords, but not to vote. As he pointed out, this is already the position of the Judges, who are summoned to Parliament and advise the Lords as a judicial body, though they have no voice in the decision. In fact, recourse to the advice of the Judges is absolute. Since the Judicature Acts, all the Judges of the High Court and the Court of Appeal are summoned to Parliament, but their advice has not been asked for since 1897, and having regard to the present judicial strength

of the House of Lords, it is most improbable that it will ever be asked again. Still, the former practice is in favour of Lord Darling's motion. Lord Parmoor, however, on behalf of the Government, saw no practical advantage in it, and other speakers saw a good deal of practical inconvenience—especially if the system was reciprocated and Ministers in the House of Lords could likewise attend and speak in the Commons. The House preferred to risk Lord Buckmaster's prophecy, based on "the history of every revolution which has broken down the social order of a great State," that reform, when it comes, will be too late.—*L.J.*, 1929, p. 70.

Discharge of a Petty Jury.—The discharge of a jury by Mr. Justice Humphreys at the Central Criminal Court on July 25, owing to one of their number having conversed with witnesses for the defence, did not probably occasion much surprise either within or beyond the confines of the legal profession. The duty of the jury to refrain from private communication with the witnesses in the case they are trying is well known; and the exercise by the Judge of his power to discharge a jury before verdict given is not seriously questioned to-day. But yet this power has not always been beyond dispute, and as Cockburn, C.J., said in *Reg.* v. *Charlesworth*, (1861) 31 L.J., M.C. at 28:—

"In no part of our procedure has the practice of the Courts more fluctuated than with reference to the question of the discharge of juries in criminal trials."—*L.J.*, 1929, p. 73.

Scrutton, L.J., Foretells.—Said Scrutton, L.J. (erroneously described in the evening press as a Law Lord), aptly enough on the eve of the Long Vacation, "The Courts may have to close down." And with rare responsiveness to the prophetic voice, the very next day they did. Whether it be due to trade depression or merchants' boycott, they look very much the same whether they are open or closed. There is nothing doing. Even the usual end-of-term spurt was a pitiful show. *The Times Reports*, which for some time had shrivelled into a meagre corner, on July 30 burgeoned and spread abroad almost to the fulness of the accustomed page. But what was it? On the left a murderer's unsuccessful appeal. Symbolically, a column of decrees *nisi* in the middle; and on the right, like the last rose of summer, the report of the rattling churns which annoyed and disturbed my old friend, Mr. Vanderpant, not once, but oftentimes in the watches of the Mayfair night.

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Yes; the Courts have closed down until October 12.—*L.J.*, 1929, p. 79.

Why the Courts are closed.—Indirectly, and as it were by innuendo, you will have noted that Scrutton, L.J., attributes the prevailing slackness in the legal trade, and its imminent liquidation, to one cause, and to one cause only: excessive costs, more especially excessive costs of counsel. "When I came to the Bar," said he, "a leader's fee—unless he were a super-luxury—was ten guineas, and two for the consultation." Let me see: when was Scrutton, L.J., called to the Bar? In 1882. O-hey: but those were the days when tuppence would buy a mutchkin of English ale. Moreover, the twenty guinea fee was not unknown, even in those days, to the less luxurious leaders.

Now the matter which so stirred the Lord Justice was a small one of security for costs in a cause which had just avoided relegation to the County Court. In one defence the estimated costs were: leading counsel, 100 guineas; junior, 70; instructions on brief, 75.

> "Preposterous," said the Judge, "there may be leaders so good that clients will pay that sum for them, but to say you can't come into Court without paying 170 guineas to counsel and 70 guineas to solicitors is outrageous."—*L.J.*, 1929, p. 79.

Killing the Goose.—While no man would rejoice more ungrudgingly than I at the sight of a large fee on one's own brief, I think there is a vast deal of truth in the words of the Judge. Certain practitioners are and have been for some time engaged in killing the goose that lays the golden eggs. They are too greedy; they will take the uttermost in a minimum of time; and then they will move on, not greatly caring what may happen to our law and our surviving lawyers when they have had their turn.

All that will be left for those of us who remain will be the exhausted and egg-less carcase of the bird. A sad burial and a long farewell would be our portion.

> "If this were the standard"—*i.e.*, the 100, 70 and 75 guineas aforesaid—"of legal remuneration, the result would be that the Law Courts would be closed at a very early stage, because the costs would be so extravagant that ordinary people could not get justice at the Law Courts."

"But no ordinary person would ever go there for that." Thus spake a fool of a layman when, on Tuesday night, I referred to the incident.—*L.J.*, 1929, p. 79.

The Attorney-General's Salary.—Sir William Jowitt, speaking on July 26, at Preston, referred, says *The Times,* to attacks which had been made upon his receiving such a large salary as Attorney-General.

He said that he never remembered such protests against the salaries of Lord Birkenhead or Lord Hailsham. "At the same time," he said,

"I think the system is a wrong one. It is ridiculous that the Attorney-General should receive much more than the Prime Minister. It is absolutely insupportable Yet, strangely enough, for the last 200 years no Attorney-General has found that out before. If and when they alter that sys'em they will certainly get no obstruction from me, but as long as that system goes on I do not see why a Labour man should be treated differently from a Tory."—*L.J.*, 1929, p. 84.

Simon's Speeches.—Yet let me not seem to display ignorance or presumption in any reference to Sir John Simon. I have before me a volume containing his Three Speeches (with appendices) on the General Strike, and there can be no doubt whatever that they are in form and substance among the very finest and most impressive utterances in the post-war Parliament. Of the three, the first was, in the nature of things, the foremost and the best. The later speeches were, for works of art, too defensive and explanatory. The first, defects and all, is probably, as a speech, the best and most typical he has ever made in the House.

Therein appears his love of an apt quotation, especially when it can be used to cap that of an opponent. He indicated the source of the quotation by Mr. Kirkwood, "Man, proud man, drest in a little brief authority." "It was the famous speech of Isabella in 'Measure for Measure' . . . . although an hon. gentleman below him thought it came from the poet Burns. . . . because he mistook the Doric accent in which the passage was declaimed for the well of English undefiled from which the orator drew his inspiration." And Sir John, viewing the Labour leaders, quoted from the same speech:

"O! it is excellent
To have a giant's strength, but it is tyrannous
To use it like a giant."—*L.J.*, 1929, p. 92.

Strikes, General and Just.—Probably that expressed the feelings of Sir Henry Slesser after his late encounters with the Liberal lawyer.

Astbury, J., whose retirement from the Bench is now regrettably near, occupies a high place in this book on the World's One and Only General Strike. To Sir John's contention that a General Strike was not a strike at all, Sir Henry Slesser (as he then was) observed that these legal propositions could only be finally decided by Judges. And pat, like a rabbit out of the hat of a conjuror, came a judgment of Mr. Justice Astbury that very morning, ready to the speaker's hand. (May 11, 1926).—*L J.*, 1929, p. 92.

Mixed Tribunals.—Since 1875 Egypt has also had the Mixed Tribunals, to which the consular jurisdiction in civil cases was transferred, and the present proposal is to give them also the jurisdiction still retained by the consular courts. Thus, while a foreigner will not have the protection of a Judge of his own nationality, his case will come before a Court composed mainly of Judges who are not Egyptian. The British Note which explains the proposed changes refers specifically to the two matters we have mentioned The extension of the criminal jurisdiction of the Mixed Tribunals will, it is stated, necessitate the preparation of a new Code of Criminal Procedure, and a check is to be kept by the Mixed Tribunals on fiscal legislation so as to ensure that it shall not inequitably discriminate against foreigners, including foreign companies. Each country concerned will have to consent separately to the abolition of its consular court, so that the change can only be effected gradually, and, while the Mixed Tribunals remain, Egypt, though nominally independent, will still be in a position of judicial inferiority. The Capitulations in Turkey were abolished by the Treaty of Lausanne of July, 1923, and in that country no safeguard such as that of the Mixed Tribunals remains. Prof. Pearce Higgins, in a note to the last edition of Hall's *International Law*, (1924), at p. 61, says: "Past experience of Turkish administration and judicial reforms does not suggest a hopeful view as regards the future position of foreigners in the matter of judicial administration." But perhaps things are turning out better than he anticipated —*L.J*, 1929, p. 98.

"Subject to Our Solicitors' Approval"—We have had a sufficiency of cases on the effect of inserting in an apparent agreement for the sale of land the formula "subject to formal contract," and we now know that these words prevent any contract arising even though a deposit is paid and a receipt given.

Of course, it cuts both ways, for either party may find that he has lost a bargain on which he was relying.

But in *Curtis Moffat, Ltd.* v. *Wheeler*, (1929) 2 Ch. 224, Mr. Justice Maugham has settled a doubt which still remained as to the effect of "subject to our solicitors' approval of the title." Are these words to be taken at their face value, or are they surplusage? In *Hussey* v. *Horn-Payne*, (8 Ch.D. 670), the Court of Appeal held that they were effective. When the purchaser puts them in he must, said Jessel, M.R., be taken to mean what he says; that is, to make it a condition that solicitors of his own selection shall approve the. title. Cotton, L.J., added the requirement of reasonableness. "If (the solicitor) acted reasonably and *bona fide* the Court would not enquire whether his objections were well founded in law." In the House of Lords, (4 App. Cases, 311) it became unnecessary to decide whether this view was right, but Lord Cairns, L.C., threw doubt upon it. "I am disposed to look upon the words as meaning nothing more than a guard against its being supposed that the title was to be accepted without investigation." Mr. Justice Maugham, however, considered he was bound by the decision of the Court of Appeal—"and I may perhaps add that it is not altogether surprising to find a great lawyer, once in a way, mistaking the meaning of an uninstructed and perhaps inaccurate layman. "Lord Cairns has been placed at the head of Victorian lawyers, but in a matter of the use of words, as between him and the plain man, Mr. Justice Maugham awards the palm to the plain man. —*L.J.*, 1929, p. 98.

Sensational Murders.—The first three weeks of another Long Vacation have passed without any sensational murder mystery having appeared to occupy that part of the Press which is, at other times of the year, pre-occupied by litigious intelligence. It would be most convenient if our sensational murders, so far as these are necessary, could be scheduled to take place at this time of the year, not only for the better accommodation of Press news, but also for another and no less important and pressing need. Every lawyer amongst us is always expected by his acquaintances, and especially by the young and pretty ones, to be a mine of inner knowledge, or at least of technical explanations of the inquiries into these grisly events; and, unless they take place during the Vacation, the fact is that few of us have the time even to inform ourselves of the public information with which the young ladies are precisely acquainted. Murderers would, therefore, oblige by going about their business, and being

discovered at it, while we are on holiday. Only this consolation is to be derived from the fact that the Long Vacation is almost invariably a close season; whatever the secret relations between the trade and those who have to keep filled and make saleable our newspapers, it must be obvious that between the lawyers and the lawbreakers there is no working alliance. That an out-of-business-hours friendship maintains between the two professions may, no doubt, be assumed from the fact that they take, apparently, their holidays at the same time of the year, and possibly together.—*L.J.*, 1929, p. 113.

Appeals from the Irish Free State.—It is reported that the chief point to be raised by the Irish Free State at the Imperial Conference next spring is the question of appeals to the Privy Council. A preliminary conference of experts from the Mother Country and the Dominions will be held at London at an early date, and to this conference the Irish Free State will send a Minister with instructions to emphasise the importance of the Privy Council point, and to obtain as far as possible the sympathy and support of delegates from other Dominions. The Irish Free State Government, more than any other member of the British Commonwealth of Nations, not excluding South Africa, during its short existence, has adopted a critical and hostile attitude towards the right of appeal to the Judicial Committee. The contention appears to be that the right of appeal to the Privy Council is an anachronism and—much more important from the Irish point of view—constitutes a limitation of the sovereignty of a self-governing dominion.—*L.J.*, 1929, p. 126.

The Judicial Committee.—Into the question of sovereignty we need not now enter. Whether the Free State Government will go as far as to ask for total abolition, or only for a further limitation of appeals, remains to be seen. A correspondent of the *Morning Post* (16th instant), Mr. Denis Gwynn, says that total abolition is not asked for "at any rate for the present." If this is so, no question of principle now arises.

The extent to which appeals are allowed from the different members of the British Commonwealth and, where they are federal, from their constituent provinces, is a matter of bewildering variety. The notion that every subject of the Crown has a right of access to the justice of the Crown through the Privy Council has no basis in fact. In the case of the Dominions, as Lord Haldane said, it is a question of more and more, or

less and less, as they please. By the British North America Act, the Crown's prerogative was expressly reserved; but from the Federal High Court of Australia, appeals on constitutional questions can only be brought on the certificate of the High Court, and the Australia Constitution Act empowers the Commonwealth Parliament further to limit appeals, subject to the consent of the Crown. In South Africa the right of appeal from the provincial Courts was abolished by the South Africa Act, 1909, and appeals from the Appellate Division of the Supreme Court require the special leave of the Judicial Committee. Appeals from Ireland are based on the precedent of South Africa. Appeals as of right are abolished, and there can only be appeals by special leave. Thus the tendency is to close the gate of access to the Crown through the Judicial Committee save with the consent either of the Dominion Supreme Court or of the Committee itself. The further step of making a Dominion judicially independent will presumably be considered in connection with the present Irish proposal. This and other aspects of the matter we do not a present discuss.—*L.J.*, 1929, p. 126.

Medical Men and Subpoenas.—Judge Gwynne-James, who recently, at Bath County Court, fined a medical doctor two guineas for failing to obey a subpœna, called attention to a matter which is one of increasing difficulty not only for professional witnesses who are required to give evidence, but for solicitors whose duty it is to secure their attendance and their goodwill. The Judge mentioned two recent cases which had occurred on his Circuit where medical men refused to give evidence in Court on behalf of their patients unless they were paid special fees; in one the doctor demanded a fee of twenty guineas. The fact is that a medical witness is bound to attend on being served with a subpœna, and to be given his conduct money, with a fee of one guinea, which in special circumstances may be increased to a fee not exceeding five guineas. For failure to obey, the doctor is liable to fine and imprisonment for contempt of Court. There can be no doubt that this legal *obligator* operates with great hardship on members of the medical profession; especially since the increase in the number of running-down cases, where medical evidence is almost invariably required. It is equally certain that their attendance must be enforced, and that there is an appreciable difference in value between a willing and an unwilling witness. An increase in the fee allowable would not meet the difficulty. Far more important, in our

view, is the frequency with which doctors are summoned to attend Court at a time when the case cannot possibly be heard. A medical man is, in consequence, often kept waiting for a day or for days while his practice and his patients are suffering. The approximate timing of cases would effect a marked improvement, and this reform cannot be regarded as impracticable. Meanwhile, the doctors must remember that fine and imprisonment are greater evils than the vexatious delay which so often follows the act of obedience to a subpœna.—*L.J.*, 1929, p. 127.

Silence in Court.—Swearing in a new metropolitan magistrate recently a learned Judge is said to have advised him not to talk much on the bench. That wise Judges and Magistrates say very little is an old story; so is the advice "Never give reasons; your decisions will probably be right, but your reasons are sure to be wrong." While it is perfectly true that a too fluent tongue is dangerous in the occupant of the bench, likely to betray him into error or indiscretion, it is easy to over-estimate the wisdom of sphinx-like silence and inscrutability. Certainly, the Magistrate who constantly interrupts witnesses is sure to confuse them. If he keeps interposing and taking the case out of counsel's hands, he embarrasses him and spoils the conduct of his case. Moreover, if he talks too much, he is probably not listening and watching the demeanour of the witnesses as closely as he might. Nevertheless, the Magistrate who hardly ever breaks silence is not necessarily profoundly wise. Those who have the handling of a case are often helped a very great deal by a timely intervention, explaining a tentative opinion so as to encourage argument or to direct it to the essential points of the case. To have no sign at all from the bench from start to finish means that no risk can be taken by shortening the proceedings or restricting the arguments; whereas an intimation that the Magistrate regards certain matters as irrelevant or unimportant and desires the issues to be confined within certain limits, defines and lightens the task of the advocate or the litigant. Without it, he has not the faintest motion of what, if any, impression he is making. Indeed, he may almost be pardoned if he sometimes wonders whether he has the undivided attention of the bench Occasional interruptions help far more than they hinder, provided they are (as they would be, one may assume) both timely and courteous.—*L.J.*, 1929, p. 127.

Ostracism or Reinstatement.—Mr. Justice McCardie spoke a true word when he said, at a meeting of the Central Discharged Prisoners' Aid Society last week, that the law was never so merciless as society itself. For many of the difficulties he encounters in his task of re-establishing himself the released prisoner has to thank society rather than the law. So long as employers, fellow workmen, friends and neighbours offer the cold shoulder to a man because he has been in prison, the punishment of imprisonment will continue long after a man's release. It is, of course, a risk to employ, or to be friend, an ex-convict. But many employers can and do offer positions not involving trust to men who have been convicted of dishonesty; later on they may even be restored to positions of responsibility. The learned Judge said that he felt that there might be two great tragedies in a man's life; first, when the prison gates clashed behind him when he went in to serve his sentence; and, secondly, when they clashed behind him when he came out after serving his sentence. Then he stood at the gates without friends, money and character. Societies may do a great deal, we all know; but unless society backs them up with practical help as well as subscriptions, they are grievously handicapped. Ostracism is the most discouraging and embittering experience the discharge prisoner ever suffers; and as long as we are so foolish and illogical as to attach stigma to the imprisonment that is suffered to expiate the offence rather than to the offence itself (provided that it results in no more harm than a binding over!) so long will the uphill path of the ex-prisoner be almost impassable.—*S.J.*, 1929, p. 408.

The Lighter Side of the Law.—An old conveyancer, mentioned by Lord Campbell in one of those biographical collections which were wittily said to have added a new terror to death, is reported to have remarked, in answer to the question whether he did not find it exceedingly irksome to be continually poring over old abstracts and such like documents, that it would be wearisome were it not that every now and again he came across "a brilliant deed." The position is much the same with those whose lot it is to go through and appraise the papers set to candidates in legal examinations. Quite recently it fell to the writer of this paragraph to examine a large number of such papers; it was dull enough work for the most part, but he was greatly cheered by an answer to one of the questions. The question related to the liability of a married woman who had ordered furniture, for which, when delivered, she had refused to pay. The particular examinee gave it as his opinion that

the married lady was liable to pay the bill, and further, that in the event of not paying, she could be made a bankrupt, but that "capital punishment could not be enforced against her!" Whether this was intended as a piece of humour was not quite clear. Possibly, in the examinee's mind there was some confusion as to the kind of "execution" that might be levied in the case of a married woman, and so the mixing up "execution" with capital punishment induced the answer set out above. It was at least a safe one.—*S.J.*, 1929, p. 439.

The Use of Medical Titles.—The prosecution of Colonel Kynaston by the Royal College of Surgeons upon charges of "wilfully and falsely pretending to be a doctor of medicine," and of using the title "M.R.C.S. Eng." contrary to the Medical Acts, raises once again the question of the discipline of the medical profession. The first charge was dismissed by the magistrate, and the second was dealt with under the Probation of Offenders Act, the learned stipendiary expressing the view that the continued use of the letters M.R.C.S. by a member whose name had been removed from the register was illegal. If we may respectfully say so, these decisions seem to be founded upon strict common sense as well as law. Obviously it is not right for a medical man whose name has been removed from the membership of the Royal College of Surgeons (for whatever cause) should continue to use letters suggesting that he is still a member. But the other question—whether he may still call himself a "doctor" is more complex. The magistrate found there was no "wilful and false pretence," and the defendant, who appeared in person, claimed that as he still held the qualifying certificate of the Society of Apothecaries he was entitled to practise and to describe himself as a doctor of medicine. It will be interesting to see what, if any, further developments follow upon this case.—*S.J.*, 1929, p. 474.

Reckless Identification.—In *Hegdis v. Rose*, (1929) (*Times*, 23rd July), an important pronouncement was made by Mr. Justice Acton: "He was prepared to accept that, if a person were kept in custody, because of reckless identification, or identification in bad faith, by another person, an action for damages would lie." The jury in the particular instance found for the defendant, who is stated to have identified a dark man, with no gold tooth, as the accused, who had been described as "fair, clean shaven, slightly bald and with a gold tooth," a mistake which

indicates considerable carelessness. The real vice of identification in many cases is that the witness, instead of picking out the individual whom he recognises or believes he recognises as *the* man, picks out the individual in the group who most resembles the one the witness is seeking. It is a trick of the mind which needs careful guarding against, but it is the melancholy fact that the persons most liable to error are the very ones who are mentally incapable of attempting to check the processes by which they arrive at a conclusion. That there is a legal remedy available in extreme cases of negligent or reckless identification, is to the good, though there is the usual drawback that many of the offenders are not worth powder and shot.—*S.J.*, 1929, p. 489.

Tricksters?—The remarkable credulity of the public at large has been responsible for many small "shady" money-making schemes devised by adventurous characters. One of the latest ideas takes the form of a well-dressed masked man selling on the streets for six pence a sealed envelope said to contain a genuine bank-note and something else of value. The origin of this scheme can undoubtedly be traced to the offering for sale of genuine English £1 notes for six pence for a wager by a man on Westminster Bridge some time ago, and many who missed a golden opportunity on that occasion fall an easy prey to the non-genuine activities of his successors. Some indignation has occasionally been expressed when the "fraud" is disclosed, but the "business" has apparently developed sufficiently extensively to attract the attention of the police. At Bow-street Police Court on the 27th June a man was charged with attempting to obtain money by false pretences by the above methods. The envelopes in question contained an obsolete German mark-note and a racing tip which the vendor described respectively as "a genuine bank-note" and "something that might be worth pounds." The Magistrate, describing the case as a border line one, said that he believed that it was fraud, but he dealt with the charge as one of obstructing the pavement and imposed a fine of 40*s*. Actual or positive fraud has been held to include cases of the intentional and successful employment of any cunning, deception or artifice used to circumvent, cheat or deceive another, and there can be little doubt in the present case that the obviously untrue suggestion regarding a wager coupled with the "genuine bank-note" statement constitute a sufficient deception to merit the description of fraud. The loss of six pence in these

circumstances may be negligible to the majority of people, but protection should be afforded to those literally poor innocents who are not sufficiently intelligent to realise that one very rarely gets something, particularly a bank-note, for nothing.—*S.J.*, 1929, p. 505.

Student's Claim against Professor.—An unusual case was tried recently at Edinburgh when Lewis Coutts, formerly a student at Aberdeen University, appealed from an interlocutor of the Sheriff of Aberdeen. Coutts had claimed £5,000 damages from Professor Jack, of the chair of English Literature at Aberdeen on the ground that the Professor had wrongfully refused him permission to attend the honours English class at Aberdeen. The Sheriff decided in favour of the professor, and the Lord President, in dismissing the appeal, said that an attack upon the professor based upon malice or oblique motive failed for want of proof, and that it was also impossible to hold that the plaintiff's academic career was brought to a close by Professor Jack's declining to allow him to attend his class. The reasons for the professor's action are not set out, but the effect of such exclusion would obviously vary, in similar cases, with the type of university and the type of lecture. In the ancient universities lectures are not usually compulsory Many undergraduates never attend lectures at all and yet attain the highest honours. In the case of certain lecturers it is said to be more comfortable to sleep in one's bed than in the lecture room. In the case of others their lectures are only attended because they happen to be examiners. While it is not for a moment suggested that the average lecture is of this type, nevertheless it could hardly be said that a student who was excluded from any particular course of lectures at one of these foundations suffered any *serious* disability as regards his examinations. Far otherwise would it be at one of the newer universities, where lectures are generally compulsory and where the examination papers are often based entirely on them. At one of such universities exclusion from a course of lectures might well prejudice a student in his whole academic career. In any case to estimate the measure of damages would be a matter of extreme difficulty. —*S.J.*, 1929, p. 505.

Sun-bathing and the Law.—It is recorded in a newspaper that, during the recent tropical weather, two young women took a sun-bath on Exmoor near a public road, with, as photographers

might say, 100 per cent. of exposure, treating the curiosity and the criticisms of the wayfarers with equal indifference. The moral and the theological aspects of the matter are hardly subjects for these pages, but the question whether these young persons offended against the law is within our province. There is no doubt, of course, that indecent exposure is a common law offence in a male, and that it can be committed without any evil intent. Thus in *R.* v. *Crunden,* (1809) 2 Camp. 89, the defendant stripped and bathed off the shore at Brighton, in a place where he had often done so before, but houses had recently been erected near by. No motive was imputed to him other than the salutary one of a pleasant dip. On prosecution, his counsel pleaded, with some ingenuity, that, if his bathing was a nuisance, the new inhabitants had come to it and must put up with it. M'Donald, C.B., however, soon dealt with this specious argument and held that, whatever place becomes the habitation of civilized man, the laws of decency must there be enforced. In accordance with the justice of the case, therefore, the defendant was bound over. There does not, however, appear to be any record of a woman or girl being prosecuted for such an offence (unless in the company of a man), which may be a criminal act for male persons only. If this is the right view, there is an analogy in section 11 of the Criminal Law Amendment Act, 1885, under which males only may be indited for gross indecency. As to statutory law, section 28 of the Town Police Clauses Act penalises every person who, to the annoyance, etc., is wilfully guilty of indecent exposure, and section 29 penalises indecent behaviour without qualification. There can be no reasonable doubt that these prohibitions would apply to both sexes, but the Act can hardly run on Exmoor. The indecent exposure punished by section 4 of the Vagrancy Act, 1824, "with intent to insult any female," is obviously a masculine offence only. Possibly, therefore, these young women were within their rights on Exmoor, though they certainly could not behave in such a manner in any park or recreation ground with properly framed regulations. It might be a nice question whether a regulation as to decency would be *intra vires* under the L.P.A., 1925, section 193 (1) (*b*). The public ought, of course, to have every reasonable opportunity for sun-bathing, now its healthful effects are known, but these are compatible with exposure which is deemed decent in the twentieth century (whatever might have been the case in the nineteenth) and the law should be framed accordingly.—*S.J.*, 1929, p. 505.

The Nationality of Wives.—Some of the difficulties of Englishmen who marry foreigners and tire of them are discussed on p. 477, *ante*. These turn on our rigid rule that a woman's domicile is that of her husband, but difficulties also occur in respect of nationality. Thus, by section 10 of the British Nationality and Status of Aliens Act, 1914, the wife of a British subject is deemed to be a British subject and the wife of an alien is deemed to be an alien. But it has been pointed out that a British girl who marries an American does not thereby automatically acquire American nationality by American Law, and, therefore, is repudiated by both States. On the other hand, an American girl who marries a British husband retains her American allegiance by American Law, but also becomes a British subject under section 10, *supra*. The anomalies which may arise in this way are discussed in *Stoeck* v. *Public Trustee*, (1921) 2 Ch. 67, in which Russell, J., held that the condition of "statelessness" or "*sans patrie*" is recognised by our law. A stateless person would be an alien, but one who, presumably, so long as he remained in that condition, could not be an alien enemy, though, on the other hand, he could not have such privileges as might be accorded a definite national. A double allegiance would be both awkward and dangerous in case of warfare between the respective states claiming a particular subject; if there were such persons in England during the war, they were, no doubt, interned, a course which made for the mutual safety of the nation and the individual. The loss of British nationality when a girl marries a foreigner has been represented as a hardship cast on a woman by the "man-made law," but, save in the unhappy event of a war between Great Britain and the husband's country, it is difficult to conceive of much hardship arising. Still, the rules that a woman's nationality and domicile should rigidly follow that of her husband hardly accord with modern notions of a woman's place in matrimony, and need reconsideration. The difficulty is, of course, that a revision of our own laws in this direction would merely add to the conflict of laws unless other nations moved also in the same direction. The whole matter suggests some spade-work at Geneva, to the end that the rules of domicile and allegiance should be uniform throughout the civilised world.—*S.J.*, 1929, p. 506.

Motor Car as a Dangerous Thing.—Rather more than twenty years' ago Lord (then Mr. Justice) Darling gave it as

his opinion in *Chichester Corporation* v. *Foster*, (1906) 1 K.B. 167, that, strictly speaking, nothing can be called "a dangerous thing," except, perhaps, in the expression used by Mr. Pope in regard to "a little learning." The allusion was apt and the observation witty, but the lapse of twenty years and the extraordinary increase on the roads during that time of the motor car, rather suggests that this now almost too-popular vehicle must be collocated with "a little learning," so as to be properly described as "a dangerous thing." Certainly the long list of road accidents chronicled day by day in the newspapers points in this direction, but it is not only when in motion that the motor car has the property of being dangerous, it may have it likewise when supposed to be safely stabled in its garage. This is well illustrated by a recent case in Alberta: *Brody's Limited* v.*Canadian National Railway Company*, (1929) 1 W.W.R. 715. There the plaintiff occupied the upper part of a building the groundfloor of which was used by the defendant as a garage. As a result of the act of the defendant's servant in cleaning with gasoline the engine of one of the motor trucks while the truck was inside the building, and while the engine was warm, without disconnecting the engine from the battery, a fire broke out which damaged the plaintiff's goods and fixtures in the upper part of the building. On a claim by the plaintiff for the damage occasioned to his goods, it was held that the defendant was liable both on the ground of negligence and under the rule in *Rylands* v *Fletcher*, (1866) L.R. 3 H.L. 330, inasmuch as the motor truck, in the condition in which it was while being cleaned, was a dangerous thing within the meaning of the rule in that famous case, which, it will be remembered, lays it down that if a person brings upon his land anything which would not naturally come there, and which is in itself dangerous, and may become mischievous if not kept under proper control, he will be liable in damages for any mischief thereby occasioned, although he may have acted without personal wilfulness or negligence.—*S.J.*, 1929, p. 506.

My Friend is too Technical.—The word "technical" has attained a peculiar significance in the legal profession. It has almost become synonymous with bad form; a term of reproach damning with its faint praise. The umpire who will give a good bat out l.b.w. without a tremor, the engineer working to incredible fractions of an inch, the surgeon insisting on making certain that he has removed all his instruments at the conclusion of an operation, all these may go their way *sans*.

peur et sans reproche. But the advocate who is ever ready to protest against the first laxity he detects, who is always confronting his harassed opponents with unsuspected cases and unheard-of *dicta* soon becomes as unpopular as Tom Brown's friend Arthur, who did Latin prep. because he loved it. In some cases, the criticism implied in the word is just. Points without substance waste time and take the attention of the court from the real issues. Wasting time and distracting attention are both bad faults; but they are more often committed by those who are not really technical at all, those whom vanity is forever forcing to their feet and who imagine that unless they are up and talking they will pass unnoticed. Often an opponent is accused of technicality simply because he has a better knowledge of the law and is resolute to put it to good use. Every submission he advances is technical, and this is not to be wondered at, because very much of the law is technical. A particular case may be highly technical, but ought it for that reason to be avoided as we avoid awkward topics of conversation in our daily life? It may very well be that a dozen or more judges, to say nothing of advocates, spent a good deal of time and learning in worrying it out. If only in courtesy to them, to say nothing of the position case-law is recognised as occupying in our legal system, the disliked decision ought to be brought to notice. Courts owe more to the "technical" lawyer than they are generally disposed to admit. How many times has he not with becoming humility reminded tribunals of decisions of which they had never heard? How often has he not construed statutes which until his masterly hand tore aside the veil had been meaningless? And often the moment he walks into court, he changes a slovenly happy-go-lucky atmosphere into one of alertness. No one wants to risk a blunder when so discerning a critic is looking on—*S.J.*, 1929, p. 533.

The Appearance of Justice.—The Lord Chief Justice in *R.* v. *Sussex, JJ., ex parte McCarthy,* (1924) 1 K.B. 256; 68 Sol. J., 253, gave utterance to a profound truth too often overlooked. He said, "There is no doubt that it is not merely of some importance, but of fundamental importance, that justice should not only be done, but be manifestly and undoubtedly seem to be done"; and he, and other judges, have frequently emphasised this importance. There are two types of mind which approach questions of bias or suspicion of bias from entirely different standpoints. One set of people will act if not actually forbidden by

law; the others consider that the mere fact that a question is raised should restrain them from acting. The latter, while, perhaps, going too far on occasion, are undoubtedly on sounder ground. It is indeed difficult to understand the mind which, uninfluenced by expectation of personal advantage, will nevertheless insist on adjudicating or taking a judicial part in proceedings where their fellows cannot unfairly be disposed to regard them as being unduly biased. The same considerations arise upon applications for change of venue, which ought to be regarded benevolently. It is pleasing to see an American court changing the venue on the ground that sixteen persons charged with conspiracy to murder a chief of police could hardly get a trial in the normal course which would have "every appearance of fairness", though it might in fact be a fair trial. This decision shows a thorough grasp of the principles upon which Anglo-American jurisprudence has been laboriously constructed by generations of lawyers intent on producing confidence in the administration of justice.—*S.J.*, 1929, p. 534.

Legal Research and the Judiciary.—A pleasant story has come down to us of a barrister entering the court with a great bundle of books, which, on seeing, a quizzical lay friend asked what they were for, as he had assumed that all counsel knew the law. "So we do", was the witty reply, "these books are for the judges". To the lay mind it appears paradoxical that the eminent men whom the State places on the bench to administer justice have to be primed with the law on each subject that is brought before them by the citation of the relevant authorities; but judges, even the most distinguished, are human and have not in their minds a ready-made storehouse of law from which they can draw rules for the decision of every dispute that arises. It has indeed been whispered that occasionally some judgment, in which the law is set out with a masterly cogency of reasoning and lucidity of statement, has been vicariously prepared, the reputed author having invoked the aid of another to grapple with the difficulties of the question involved; but in this country we have not gone the length of advocating legal research specially for the benefit of our judges, as has recently been done by a member of the New York bar, who, in a letter read at a founders' day dinner of the Lawyers' Club of the University of Michigan, suggested the giving of "free, confidential legal advice to judges, high and low, as one of the directions which legal research should take". It seems a somewhat novel development

of the function of the legal researcher, whom we have hitherto regarded as one who explored the early history of law and procedure with the object of elucidating what is obscure in the system of to-day, and not as one who answered legal queries for the judiciary. But, after all, a judge may obtain his information as best he can, and possibly there may be scope for this new form of research.—*S.J.*, 1929, p. 547.

Litter.—To fine a man for dropping a few omnibus tickets in the street, or for throwing away nutshells in a park, seems at first sight a piece of grandmotherly interference. If, however, hundreds of thousands of people every day litter the public streets and parks, and if every week-end beauty spots all over the country are defiled by the rubbish of innumerable untidy picnic parties, the evil assumes large proportions and it becomes clear that the many who contribute a little to the large sum-total must be taught somehow that this new national fault is to be conquered. Educating children and appealing to adults may have some effect, but apparently bye-laws and fines are also necessary. The Home Office has lately been considering the framing of a model bye-law for the use of local authorities. In the enforcement of such bye-laws it is necessary to preserve a sense of proportion and reality. Penalties need hardly be severe for small acts of thoughtlessness, but, equally, prosecutions should not be ridiculed as vexatious. Paraphrasing a famous dictum, magistrates might well say: "You are not fined for throwing down a little paper, but in order that others may not throw down paper."—*S.J.*, 1929, p. 560.

Very Mixed Bathing.—Many of us can remember when bathing was a matter of considerable restriction. Without a machine or a tent, it was usually allowed before 8 A.M. or after 8 P.M., and it was never mixed. Bye-laws were strictly enforced; indeed, very few people had the temerity to disregard them. We should be sorry to go all the way back; mixed bathing, in the friendly, family party style, is the best bathing of all. But surely there might still be limits! Seaside and riverside at this season of the year are abandoning, or so it seems in many parts, every restriction as to time and place. What used to be quiet little haunts are now noisy rendezvous for bathers of both sexes who dress and undress with little regard for passers-by, and who often spend a great deal of time ashore in costumes which, while decent enough for the actual bathe, are quite inadequate

for prolonged use on land. We think that without being either prudish or offensive, authorities might insist on a little more observance of restraint. Talking of bathing (one may surely digress a little in the Long Vacation), the Marlborough Street magistrate expressed considerable surprise upon learning last week that a woman police constable was on duty in Hyde Park guarding the approach to the boys' bathing place and warning off women who approached too closely. He, not unnaturally, but perhaps not quite seriously, suggested that sex equality demanded that a male officer should be told off to guard the girls' bathing place. It certainly seems very mixed.—*S.J.*, 1929, p. 561.

Marriages of Convenience.—Magistrates dealing with matrimonial cases involving desertion or neglect to maintain occasionally find themselves confronted with legal problems of some difficulty, and the common, airy disposal of such cases as matters of common sense involving no law is likely to lead to some bad mistakes. For example, agreements to live apart, made after marriage, have often to be considered as having an effect upon the question of alleged desertion. These sometimes present difficulty; but, at all events, it is beyond doubt that such an agreement may be valid. Less common, and, therefore, more likely to lead to error, is the case of an agreement made before marriage. The Willesden bench had an instance of this kind last week, when the husband produced a document which he said his wife signed before marriage in order to make the marriage conditional. It read: "I agree that my marriage is purely formal, to assist me through the birth of my child, after which I agree to annul the said marriage." The chairman rightly pointed out that individuals had no power to annul marriages. The wife denied signing the document, and apparently the magistrates believed her. The husband was ordered to pay maintenance for his wife and child. Furthermore, it may be pointed out that even if a woman did sign such a document before marriage, it would clearly be invalid as being contrary to public policy. Couples who have tried living together and made a failure of it are allowed to make lawful agreements to live apart; but any such agreement made before marriage would be of no effect whatever.—*S.J.*, 1929, p. 561.

BOOK REVIEWS.

THE TRIAL OF JEAN PIERRE VAQUIER. Notable British Trials Series. Published by Messrs. Butterworth & Co. (India), Ltd. Price Rs. 6-8-0.

As in many other cases of this kind, here also a woman was the cause of the murder of Mr. Alfred Poynter Jones by Jean Pierre Vaquier who was passionately in love with the former's wife. The story of the infatuation of the Frenchman for Mrs. Jones and the consequent illicit connections he had with her have been narrated with all the details sufficient to make the introduction to this volume gratifying the avidity of a reader of romance. The tragic end of Mr. Jones resulting from poison he drank from a bottle which contained strychnine, is really moving. The prosecution, ably conducted by Sir Patrick Hastings, K.C., the Attorney-General, leaves nothing unsaid or undone in making out that the accused was entirely responsible for that monstrous act. The defence by Sir Henry Curtis Bennet, K.C., impresses us how much he had to contend against a good deal of strong evidence for the prosecution. The charge to the Jury of Justice Avery clearly shows us how many are the circumstances which go to prove the case against the man in the box. This volume is, of course, a good addition to the Trials Series.—*K.C.*

THE CODE OF CRIMINAL PROCEDURE, by Dinesh Chandra Roy, M.A., B.L., Advocate, High Court, Calcutta. Published by Messrs. Butterworth & Co., Ltd. Price Rs. 15.

We welcome this work from the pen of one who is familiar to us by his commentary on the "Indian Penal Code." One chief merit of the book under review is that the author has taken the trouble to give under each section the history of the law by noting the corresponding sections in the former Codes. The amendments are given prominence by being printed in italics and their effect is stated with clearness and precision. Reports of the Select Committee and Statement of Objects and Reasons have been freely quoted wherever useful. In the citation of case-law, the learned author has displayed nice discrimination. He has grouped all the relevant and leading cases under appropriate headings and has also critically examined them in the light of the statutory amendments.

The value of this work would have been considerably enhanced if Mr. Roy had taken some pains to give an accurate

text of the sections as amended up-to-date. There is no up-to-date Government Edition of the Criminal Procedure Code, the last edition having been brought up to September, 1923. Since then, several changes have been made by various enactments. It is unfortunate that the several of the amendments introduced since 1923 should have escaped the notice of the author, for example the amendments inserted by Act X of 1927 in S. 55 (1), cl. (6) and in the second proviso to S. 188; by Act VIII of 1925 in S. 98; by Act II of 1926 in S. 202; by Acts XXXII of 1925 and XXXIV of 1926 in sections 4, cl. (*j*), 266, 364 and 365; the addition of section 295-A by Act XXV of 1927 in Ss. 99-A and 196; the omission of the words "with the like sanction" in sub-section (1) of S. 269 by Act X of 1927; the insertion of cl. (*aa*) by Act XXIII of 1925 and addition of the words "or Air Force" in cl. (*g*) by S. 2, Schedule I of Act X of 1927; the substitution by Act VII of 1924 of the words "sub-section (2)" in sub-section (3) of S. 541; the substitution and addition by Act X of 1927 in S. 549; the substitution of "sixteen" for "fourteen" years by Act XVIII of 1924 in S. 552; and the addition of the words "sub-sec. (1)" after S. 562 by Act VII of 1924 in S. 564. Some of the amendments in Sch. II have also been left unnoticed, for example, the omission of S. 159 by Act XXXVII of 1925; the addition of S. 295-A by Act XXV of 1927; the addition to S. 376 by Act XXIX of 1925; and the repeal of Ss. 490 and 492 by Act III of 1925. In Schedule III, the repeal by Act XXXVII of 1925, of No. (16) under the ordinary powers of a Magistrate of the third class, and of Nos. 15 and 16 under the ordinary powers of a District Magistrate, have not been noted.

Perhaps such shortcomings as the above have to be overlooked as inevitable in a work of this magnitude. We have no doubt that the author has succeeded in his main aim, as stated in his Preface, of bringing out a work useful to the Profession. The get up and printing are attractive and the price is not high.—*M.A.K.*

THE LAW APPLICABLE TO KHOJAS AND CUTCHI MEMONS, by S. R. Dongerkery. Price As. 8.

This small pamphlet deals mainly with the question to what extent the rules of Hindu Law apply in the case of the Khojas and the Cutchi Memons and the grounds on which the rules have been applied to them. To avoid any confusion the learned writer had dealt with the case of Khojas and Cutchi Memons

separately in considering how far the rules of Hindu joint family law has been applied to each. The personal law applicable to these communities has been traced from the earliest decisions of the British Courts and the lucidity with which the basis of the application of certain parts of the Hindu Law to these communities has been stated will, we feel sure, remove some of the popular misconceptions underlying them. The author has also given the provisions of the Cutchi Memons Act of 1920 with subsequent amendments and has added his notes to the sections. We have no doubt that this short monograph will tend to a clear and correct understanding of the law on the subject.

LAW AND PROCEDURE IN EXECUTION AND MISCELLANEOUS MATTERS, by Messrs. Nirmal Kumar Sen, M.A., B.L. and Anil Kumar Das Gupta, B.L., 1929. Published by M. C. Sarkar & Sons. Price Rs. 4.

We are aware of only one other book dealing with the topic of Execution; and it was published some years back in Madras. The volume under review collects together the provisions of the Civil Procedure Code, the Indian Limitation Act, the Provincial Small Causes Courts Act and the Bengal Tenancy Act dealing with the execution of decrees and orders. The learned authors have given full commentaries on the provisions bringing the case-law thereon up-to-date. There are also chapters dealing with arbitration and miscellaneous matters before and after decree, such as arrest and attachment before judgment, injunctions and receivership, where the provisions of the Civil Procedure Code on these subjects have been given with commentaries. We hope that this book will be found useful to lawyers in their practice.

THE LEGAL PRACTITIONERS ACT, by Khitish Chandra Chakravarti, B.A., B.L., 3rd edition, 1929. Published by M. C. Sarkar & Sons. Price Rs. 3-8-0.

In this edition the learned author has thoroughly revised and brought up-to-date his commentaries on the Legal Practitioners Act. The case-law has been noticed down to July of this year. The usefulness of the book can be judged from the fact that the author has also given all the prior Legal Practitioners Acts and the rules made by the various High Courts as well as the Bar Councils Act of 1926 with its later amendments.